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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/620,227

07/20/2000

Moshe Flugelman

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03/26/2003

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EXAMINER

BARRETT, THOMAS C

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

# Office Action Summary

Application No.

09/620,227

Applicant(s)

FLUGELMAN, MOSHE

Examiner

Thomas C. Barrett

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 and 26-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 19-25 and 51-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 5) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments with respect to claims 1-12, 19-25, and 51-55 have been considered but are moot in view of the new ground(s) of rejection.

The phrase "endothelial cells that have been genetically altered to express or over express..." is being treated as similar to a "product-by-process" type claim. Because the cells already express ***at least one*** cellular adherence factor it is the same as the endothelial cells ***claimed***.

Furthermore, it does not matter if Pratt or Huber "so much as suggest that transforming the cells to express DANCE" if Nakamura supplies motivation to combine. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., transforming the cells to express DANCE would have a beneficial effect on the adherence of the ECs) are not recited in the rejected claim(s).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, and 52-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Pratt et al. Pratt et al. discloses a prosthetic vascular ePTFE graft seeded

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with genetically transformed endothelial cells from a vein of the host or other sources  
(col. 3, lines 29-36).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 19-25 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt et al. in view of Nakamura et al. Pratt et al. discloses a prosthetic vascular ePTFE graft seeded with genetically transformed endothelial cells however fails to disclose a method of genetically transforming the endothelial cells to express DANCE. Nakamura et al. teaches genetically transforming the endothelial cells to express DANCE (p 7, pp 3), which promotes the adhesion of endothelial cells (Abstract). It would have been obvious to one of ordinary skill in the art to combine the teaching of genetically transforming the endothelial cells to express DANCE, as taught by Nakamura et al., to a prosthetic vascular ePTFE graft seeded with genetically transformed endothelial cells as per Pratt et al., in order to promote the adhesion of endothelial cells.

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***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3580 for regular communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0850.



Thomas Barrett  
March 19, 2003



**CORRINE McDERMOTT**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**